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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|-------------------------------|
| 10/605,592 | 10/10/2003 | Mark William Peters | 81057663/199-2018 | 2591 |
| 28395 | 7590 | 05/25/2004 | | |
| BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238 | | | | EXAMINER WAKS, JOSEPH |
| | | | | ART UNIT 2834 PAPER NUMBER |

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|-----------------------------|-----------------|---------------|--|
| Offic Action Summary | Application N . | Applicant(s) | |
| | 10/605,592 | PETERS ET AL. | |
| | Examiner | Art Unit | |
| | Joseph Waks | 2834 | |

-- Th MAILING DATE of this communication appears on the cover sheet with the c rresp ndence address --
P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 and 14-20 is/are rejected.
- 7) Claim(s) 13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-5 and 15-20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, "certain efficiency" is indefinite.

In claim 3, "detected cold start condition" should be --said detected cold start condition--.

In claim 4, "certain spark timing" is indefinite.

In claim 7, "slowly lowering the positive torque" is indefinite.

In claim 15, "the detection based on at least some of the measured vehicle operating conditions" is indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. **Claims 1-7, 10-12, 14-19** are rejected under 35 U.S.C. 102(e) as being anticipated by **Bastien et al. (FR 2784626)**.

Bastien et al. disclose a method of operating a hybrid electric vehicle comprising steps of detecting cold- start condition or transient event (both characterized by low gas temperatures in the catalytic converter inlet); selectively providing a negative torque to the engine 12 by running the motor 14 as a generator thus artificially alter the engine operation in a manner that reduces the exhaust emission, providing a lean air to fuel ratio during the detected cold start condition (Re page 5, lines 22-32 and page 6, lines 1-2) and retarding spark timing (Re page 4, lines 26-32).

Allowable Subject Matter

5. **Claim 13** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The feature of the transient event being detected by monitoring the torque demands on the engine, in combination with the other limitations present, are neither disclosed nor taught by the prior art of record.

6. **Claims 8, 9, and 20** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The feature of the transient event being detected by monitoring the torque demands on the engine, in combination with the other limitations present, are neither disclosed nor taught by the prior art of record.

Prior Art

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Waks whose telephone number is (571) 272-2037. The examiner can normally be reached on Monday through Thursday 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren E Schuberg can be reached on (571) 272-2044. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph Waks
Primary Examiner
Art Unit 2834